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October 28, 2002

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INDEPENDENT

The Honorable Ann M. Veneman
Secretary
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Veneman:

On October 12, the Wampler Foods plant in Franconia, Pennsylvania, which is owned by Pilgrim's Pride Corporation, recalled approximately 27.4 million pounds of fresh and frozen ready-to-eat turkey and chicken products because of possible contamination with *Listeria monocytogenes*. This recall expanded on an October 9 recall of 295,000 pounds of turkey and chicken products. The expanded recall encompassed products produced between May 1 and October 11.¹

The recall was spurred by a profound tragedy. Investigation of the current outbreak of listeriosis has revealed that since mid-July, 46 people have been found to be infected with the outbreak strain of *Listeria monocytogenes*. Most of the victims were hospitalized, seven have died, and three pregnant women have had miscarriages or stillbirths.² The Centers for Disease Control and Prevention (CDC) has matched the outbreak strain to strains of *Listeria* found at the Wampler Foods plant. CDC has also indicated that food products from the Wampler Foods plant are the "most likely source" of the outbreak.³

¹FSIS, Recall Release, *Pennsylvania Firm Expands Recall of Turkey and Chicken Products for Possible Listeria Contamination* (Oct. 12, 2002) (online at <http://www.fsis.usda.gov/OA/recalls/prelease/pr090-2002.htm>).

²CDC, Press Release, *Update: Listeriosis Outbreak Investigation* (Oct. 15, 2002) (online at <http://www.cdc.gov/od/oc/media/pressrel/r021015.htm>).

³*Listeria Outbreak is Traced to Plant Outside Philadelphia*, Chicago Tribune (Oct. 16, 2002).

As part of the response to this tragedy, we believe that it is essential to ask whether the contamination could have been avoided and the deaths and illnesses prevented. In particular, we are concerned about two potential missed opportunities. First, we understand that USDA knew about sanitation violations at the Wampler Foods plant in Franconia before it initiated the investigation that ultimately led to the recall. Second, we have learned that Wampler Foods was conducting its own environmental tests for *Listeria* at its plant and found positive results, but failed to disclose this information to USDA inspectors at the time of the testing.

As explained below, we are writing to seek more information about these issues and others related to the recall.

Problems at Wampler Foods

At a briefing for congressional staff on October 17, 2002, USDA stated that its in-plant inspectors had documented sanitation violations at Wampler Foods before USDA initiated its investigation of the *Listeria* outbreak. At the briefing, USDA did not provide information about the type of sanitation violations found by its inspectors or the dates that the violations were found.

USDA did say that the violations were of sufficient concern to the in-plant inspectors that they made a request for a Consumer Safety Officer (CSO) to come to the plant. A CSO can make scientific assessments of a plant's food safety systems.⁴ This request for outside intervention is a significant step.

USDA was not clear at the briefing exactly when this request for a CSO was made by its in-plant inspectors. USDA did say that the request was "pending" when USDA initiated its investigation of the *Listeria* outbreak.

We seek additional information about what USDA knew about conditions at the Wampler Foods plant and when USDA obtained this knowledge. We request that you provide:

- (1) Detailed information about any sanitation violations found at the Wampler Foods facility by USDA's in-plant inspectors since January 1, 2002, including the types of violations found and the dates they were discovered;
- (2) Detailed information regarding the date that the CSO was requested and the reasons for the request, including any communications between USDA and Wampler Foods or within USDA regarding the request for a CSO; and

⁴FSIS, Backgrounders/Key Facts, *FSIS Workforce: Introduction of the Consumer Safety Officer* (May 2002) (online at <http://www.fsis.usda.gov/oa/background/cso.htm>).

- (3) Copies of any correspondence, e-mails, other communications, and notes of conversations related to food safety that have taken place between USDA officials and Wampler Foods since January 1, 2002.

***Listeria* Testing by Wampler Foods**

USDA also revealed at the congressional briefing that Wampler Foods had been testing for *Listeria* at its plant over the summer. According to USDA, a number of the test results were positive for *Listeria* in environmental samples taken at the plant, although the company did not do additional testing to determine whether there was *Listeria monocytogenes*.

USDA indicated that Wampler Foods did not provide this important information to USDA. In fact, USDA stated that it was not aware of the positive *Listeria* results until late September during the outbreak investigation.

Knowledge that the Wampler Foods facility had tested positive for *Listeria* during the summer could have had a significant impact. We ask that you provide detailed information regarding the *Listeria* testing conducted by Wampler Foods since January 1, 2002. Please include information on the number of *Listeria* tests conducted by Wampler Foods, the dates of the tests, whether and when USDA was informed that the tests were occurring, and copies of all materials obtained from Wampler Foods related to the *Listeria* testing both before and after the outbreak investigation began.

Status of Proposed Regulations

As a matter of responsible corporate conduct, Wampler Foods should have shared the results of its *Listeria* testing with USDA. But under current federal food safety regulations, Wampler Foods was not legally required to do so. This underscores the urgent need to revise the regulations as soon as possible.

Under the Clinton Administration, USDA tried to do this. A proposed rule on *Performance Standards for the Production of Processed Meat and Poultry Products* was developed by the Clinton Administration and published in the Federal Register in February 2001.⁵ Under this rule, any plant that produces ready-to-eat meat or poultry products would have two options: (1) it could address *Listeria monocytogenes* in its Hazard Analysis and Critical Control Point (HACCP) plan, which would require the plant to set out the preventive measures necessary to control for the bacteria; or (2) it could test food contact surfaces for *Listeria* species on a monthly basis and would be required to make all test results available to USDA personnel.

⁵66 Fed. Reg. 12590 (Feb. 27, 2001).

In either case, the plant would be required to take corrective actions to prevent production and distribution of contaminated product.

Unfortunately, this important rule appears to be in bureaucratic limbo. In fact, USDA spokesperson Steven Cohen told *USA Today* that it was “disingenuous to suggest” that “different regulation” could have prevented the outbreak and recall.⁶ Mr. Cohen’s rationale is that because many companies, including Wampler Foods, do their own testing voluntarily, “[r]equiring companies to do their own environmental testing really wouldn’t have had impact on this situation.”⁷

This position makes no sense. As we understand the situation, Wampler Foods was doing its own testing, found results positive for *Listeria*, failed to share this information with USDA, and subsequently distributed food products contaminated with *Listeria monocytogenes*. Is USDA’s position truly, as Mr. Cohen contends, that several months of advance notification of positive *Listeria* results would have made no difference?

At the briefing, USDA indicated that the proposed *Listeria* rule discussed above would not be finalized until December 2003. This is far too long. There has already been ample time to consider the comments since the closing of the comment period in September 2001. Food safety requires that USDA act immediately to protect against future outbreaks caused by *Listeria monocytogenes*. We therefore request that you provide us with a detailed justification of the extensive delay expected in finalizing the *Listeria* rule.

We also ask that you provide a detailed explanation of the steps USDA plans to take in the interim to protect the food supply from *Listeria* contamination. You have announced that you asked the Food Safety and Inspection Service (FSIS) to develop a plan to strengthen current testing for *Listeria monocytogenes*.⁸ However, the details of this plan have not been made clear. We request that you explain exactly what you have asked FSIS to do. For example, you stated that USDA will “require that establishments producing ready-to-eat products reassess their HACCP plans to account for the likelihood of contamination with *Listeria monocytogenes*.”⁹ Does this mean that you will require that all such establishments have *Listeria* testing as part of

⁶*Listeria Fear Prompts Meat Recall*, USA Today (Oct. 15, 2002).

⁷*Id.*

⁸USDA, News Release, *USDA Provides Update on Listeria Recall* (Oct. 17, 2002) (online at <http://www.usda.gov/news/releases/2002/10/0445.htm>).

⁹*Id.*

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their HACCP plans? If not, what does that statement mean? On what date will this requirement take effect?

Status of Recalled Products

USDA indicated at the congressional briefing that Wampler Foods had notified all the distributors who had received the recalled products and that the distributors, in turn, would notify the establishments that had received the recalled products, such as grocery stores and delicatessens. According to USDA, the Department conducts spot checks to verify that the proper notification is taking place.

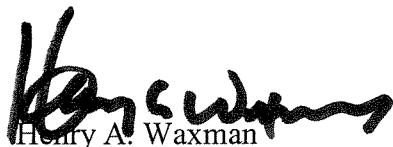
We ask that you provide us with the details and results of USDA's verification efforts. Furthermore, while we recognize that it is difficult to track products that have already been sold to consumers, we ask that you provide us with as much information as is available regarding the amount of the recalled meat that has been recovered. We would also like to know how much of the 1.8 million pounds of turkey products that were purchased by USDA for distribution to schools and other recipient agencies have been recovered.

Conclusion

The current listeriosis outbreak is the tragic result of our inadequate food safety regime. It would be an even greater tragedy if we failed to explore every possible means of preventing such an outbreak in the future. As we have learned from our investigation into the recent ConAgra recall, multiple warning signs can go unheeded, resulting in long delays between product contamination and recall. If it turns out that USDA failed to pay proper attention to warning signs at Wampler Foods, then American consumers may rightly wonder whether USDA can adequately protect their health and their lives.

Thank you for your prompt attention to this matter. We request a reply by November 6, 2002.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform

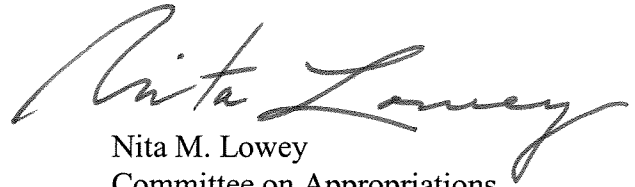


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